

REFERENCE TITLE: archaeological discoveries; private lands

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2680

Introduced by
Representatives Nichols, Mason, Senator Aguirre; Representatives Gray C,
Reagan, Senator Martin

AN ACT

AMENDING SECTION 41-844, ARIZONA REVISED STATUTES; RELATING TO ARCHAEOLOGICAL DISCOVERIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-844, Arizona Revised Statutes, is amended to
3 read:

4 41-844. Duty to report discoveries; disposition of discoveries;
5 definitions

6 A. A person in charge of any survey, excavation, construction or other
7 like activity on any lands owned or controlled by this state, by any public
8 agency or institution of ~~the~~ THIS state, or by any county or municipal
9 corporation within ~~the~~ THIS state shall report promptly to the director of
10 the Arizona state museum the existence of any archaeological, paleontological
11 or historical site or object that is at least fifty years old and that is
12 discovered in the course of such survey, excavation, construction or other
13 like activity and, in consultation with the director, shall immediately take
14 all reasonable steps to secure and maintain its preservation. If it is
15 necessary to move the object before completion of the proceedings prescribed
16 by this section to permit the continuation of work on a construction project
17 or similar project, the director shall require that the move be accomplished
18 in the manner that will least disturb and best preserve the object. IF THE
19 SITE OR OBJECT IS LOCATED ON PRIVATELY OWNED LAND THAT IS CONTROLLED BY A
20 COUNTY, THE PERSON SHALL ALSO NOTIFY THE PRIVATE OWNER OF THE LAND. IF THE
21 PRIVATE OWNER OF THE LAND DESIRES THAT THE SITE OR OBJECT REMAIN UNDISTURBED,
22 THE DIRECTOR SHALL DETERMINE WHETHER THERE EXISTS ANY REASONABLE ALTERNATIVE
23 TO MOVEMENT OR DISTURBANCE OF THE SITE OR OBJECT AND, IF SO, SHALL DIRECT
24 THAT THE SITE OR OBJECT REMAIN UNDISTURBED.

25 B. If the objects discovered are human remains, funerary objects,
26 sacred ceremonial objects or objects of national or tribal patrimony, the
27 director of the Arizona state museum shall, to the best of his ability, give
28 notice of the discovery to:

29 1. All individuals that may have a direct kinship relationship to the
30 human remains.

31 2. All groups that it is reasonable to believe may have a cultural or
32 religious affinity to the remains or objects.

33 3. Appropriate members of the curatorial staff of the Arizona state
34 museum.

35 4. Faculty members of the state universities who have a significant
36 scholarly interest in the remains or objects.

37 5. The state historic preservation officer.

38 C. American Indian tribal governments that wish to be notified
39 pursuant to this section shall keep on file with the director lists of the
40 cultural groups and geographical area with which they claim affinity.

41 D. If American Indian human remains, funerary objects, sacred
42 ceremonial objects or objects of cultural patrimony are involved, the
43 director, in addition to giving notice as required in subsection B, shall
44 give notice to the tribes that occupy or have occupied the land on which the

1 discovery is made and to the Arizona commission ~~on~~ OF Indian affairs and the
2 intertribal council of Arizona.

3 E. The director shall respond to every report of a discovery in a
4 timely fashion, and within six months of being notified of the discovery, the
5 director shall convene a meeting of notified persons and representatives of
6 notified groups to discuss the most appropriate disposition of the discovered
7 materials. At this meeting, the director shall encourage agreement among all
8 participants regarding the most appropriate disposition and treatment of the
9 materials. An agreement may include a decision to curate or rebury materials
10 subject to conditions or limitations, a decision to engage in scientific
11 analysis before repatriation or reburial or any other appropriate
12 disposition. If an agreement is reached, it shall determine the disposition
13 and treatment of the materials and the director shall oversee its
14 implementation.

15 F. If no agreement is reached within six months of the meeting
16 required by subsection E, the human remains or funerary objects shall be
17 disposed and treated in accordance with the wishes of the nearest relative
18 with a direct kinship relationship, or with the wishes of the governing body
19 of the group with cultural or religious affinity to the remains or objects if
20 no relative exists. If sacred ceremonial objects or objects of national or
21 tribal patrimony are concerned, disposition and treatment shall be in
22 accordance with the wishes of the governing body of the group with cultural
23 or religious affinity to the objects. The authority to determine the
24 disposition and treatment of remains or objects pursuant to this subsection
25 shall not be exercised in a manner that would prevent timely completion of ~~a-~~
26 ~~ANY~~ construction project or other project.

27 G. If there is no person with a direct kinship relationship or a group
28 with a cultural or religious affinity to human remains or funerary objects
29 and the remains have no scientific value, the remains or funerary objects
30 shall remain undisturbed. If it is necessary to move them in order to permit
31 completion of a construction or similar project, the remains or funerary
32 objects shall be reburied under the supervision of the director in a place as
33 similar and close as possible to their original burial site. If the remains
34 or funerary objects have scientific value, they may be curated by the Arizona
35 state museum or other authorized repository for a period of one year, after
36 which they shall be reinterred. If remains of American Indians are involved,
37 reburial pursuant to this subsection shall be undertaken with the cooperation
38 of the Indian tribe located nearest to the place where the remains were
39 discovered. Reburial may, with that tribe's consent, take place on that
40 tribe's reservation. The one-year period for scientific curation may be
41 extended with that tribe's consent. If there is no group with a cultural or
42 religious affinity to sacred ceremonial objects or objects of national or
43 tribal patrimony, the director shall decide on the most appropriate
44 disposition and treatment. ~~Where IF~~ American Indian materials are involved,

1 the determination shall be made in consultation with appropriate tribal
2 representatives.

3 H. A repository charged with the care or custody of human remains,
4 funerary objects, sacred ceremonial objects or objects of national or tribal
5 patrimony pursuant to this section shall maintain them with appropriate
6 dignity and respect and with consideration for the specific applicable
7 cultural or religious traditions applicable to the remains or objects. When
8 materials are returned to relatives or affiliated groups, the relatives or
9 groups shall accept and undertake responsibility for the protection and
10 security of the materials.

11 I. The expense of any curation or reburial pursuant to this section
12 that is required as the result of a construction project or similar project
13 shall be borne by that project. Reburials made in order to satisfy the
14 wishes of a relative or affinal group shall be by and at the expense of the
15 relative or group.

16 J. If a person believes that the provisions of this section have not
17 been properly applied he shall give written notice of this claim to all other
18 parties entitled to notice under subsections B and C. The parties shall meet
19 within fifteen days of receiving the notice and **SHALL** attempt to agree on the
20 designation of a third party to assist in the resolution of the dispute. If
21 the parties cannot agree within fifteen days on a third party, the state
22 historic preservation officer shall serve in that capacity. The adverse
23 parties shall attempt to reach a resolution with the assistance of the third
24 party. If a resolution cannot be reached within ninety days of the
25 designation of the third party, the third party shall resolve the dispute.
26 Either party may appeal a decision within thirty days to the superior court
27 in the county in which the subject of the dispute is located.

28 K. If a written request for the reburial or repatriation of human
29 remains, funerary objects, sacred ceremonial objects or objects of national
30 or tribal patrimony in the possession and ownership or control of an agency
31 of this state, as of ~~the effective date of this section SEPTEMBER 27, 1990~~,
32 is made by the government of an American Indian tribe, the requirements of
33 this section apply as if the remains or objects had been discovered after ~~the~~
34 ~~effective date of this section SEPTEMBER 27, 1990~~.

35 L. Whenever two or more groups or tribes have affinity to the same
36 human remains, funerary object, sacred ceremonial object or object of
37 national or tribal patrimony and they do not agree on the disposition or
38 treatment of such remains or object, the question of which group or tribe
39 shall be deemed to have affinity shall be resolved pursuant to
40 subsection J. In making the determination, consideration shall be given to
41 all the relevant evidence of affinity.

42 M. For the purposes of this section:

43 1. "Funerary object" means an object discovered in proximity to human
44 remains and intentionally buried or interred with the remains.

45 3. 2. "Group" includes American Indian tribes.

1 2. 3. "Group with a cultural or religious affinity" means any of the
2 following:

3 (a) In the case of human remains or funerary objects, any tribe that
4 has submitted a written claim of affinity pursuant to subsection C or any
5 other group or tribe that has cultural affinity in light of all the relevant
6 evidence.

7 (b) In the case of a sacred ceremonial object, a group whose religious
8 observances traditionally have utilized such object.

9 (c) In the case of an object of national or tribal patrimony, a group
10 whose past or present government or traditional cultural organization was or
11 is associated with the object.

12 4. "Human remains" means any remains of a human being who died more
13 than fifty years before the remains are discovered.

14 5. "Objects of national or tribal patrimony" means inalienable items
15 of historical or cultural significance to tribal groups.

16 6. "Sacred ceremonial object" means an object traditionally utilized
17 in religious observances.

18 7. "Tribe" means any federally recognized tribal government.